

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.330 of 2019

In
Civil Writ Jurisdiction Case No.2912 of 2018

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Md. Mahtab Alam S/o Late Sharafuddin Resident of Village - Siktiya, P.S.
Azamnagar, District - Katihar.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayat Raj Department, Bihar, Patna
2. The District Magistrate, Katihar
3. The Deputy Development Commissioner, Katihar
4. The District Panchayat Raj Officer, Katihar
5. The Treasury Officer, Katihar
6. The District Programme Officer (Establishment), Katihar
7. The Block Development Officer Barari, Distt. - Katihar
8. The Accountant General Bihar, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Md. Ataur Rahman
For the Respondent/s : Mr.Pushker Narain Shahi (Aag6)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-08-2019

Heard learned counsel for the appellant and the
learned counsel for the State of Bihar.

The order that we propose to pass does not require
and necessity of any counter affidavit being filed at this stage
inasmuch as the State has already filed a counter affidavit and a
supplementary counter affidavit in the writ petition that have



been perused by us.

The writ petition came to be consigned in the absence of the learned counsel for the appellant and on a perusal of the counter affidavits filed on behalf of the respondents presuming that the appellant had been paid his dues.

The appellant appears to have retired from the post of Panchayat Sevak on 31st of July, 2013 from the office of Block Development Officer, Barari, Katihar,

The dispute raised in the writ petition was with regard to his post-retiral benefits and other pecuniary benefits upon retirement. The writ petition was answered by the filing of a counter affidavit of the Block Development Officer, Barari who in paragraph No. 5 and in paragraph No. 13 stated as under:-

“5. That it is humbly stated herein that under the following head payments have been made to the petitioner:

- i. G.P.F. amount vide bill no. 87/15-16.....Rs. 272787.00/-
- ii. Group Jiwan Bima vide bill no. 139/13-17..Rs.68104.00/-
- iii. Provisional Gratuity vide Bill no.116/14-15 ..Rs.237450.00/-
- iv. Provisional Pension vide Bill no.117/14-15..Rs.166915.00/-
- v. Provisional Pension vide Bill no.118/14-15..Rs.38967.00/-

13. That with regard to the statements made in paragraph no. 15, it is humbly stated here that payment with regard to Group Jiwan Bima, gratuity, and provisional pension which has already been paid as mentioned hereinabove. With respect to payment of G.P.F. it is humbly submitted here that the G.P.F. amount could not be received by the petitioner as the same went to Delhi that time. A



cheque no. 519828 dated 8/8/2018 for the amount to the tune of Rs. 272787/- has been issued and is pending for handing over to him.

A supplementary counter affidavit was also filed on behalf of respondent No. 7 and in paragraph 4 and 5 thereof the following averments were made:-

“4. That it is humbly stated here that pursuant to the order dated 16/8/2018 of the Hon’ble Court, the deponent is bringing on record the details of payment and service book of the employees, which bears the detail calculation under different heads.

5. That with regard to handing of cheque to the counsel representing the petitioner, it is humbly stated and submitted here that such cheque amounting to Rs. 272787/- has already been transferred in the account of the petitioner.”

The appellant remained unrepresented and he did not file any rejoinder to the said counter affidavit.

Another counter affidavit was filed on behalf of the Accountant General through the Accounts Officer in the office of the Accountant General at Patna and the following statements of fact was made in paragraph No. 3:-

“3. That the statement made in Para-1 of the writ petition it is stated that the pensioner retired on 31.07.2013 as panchayat sevak from the office of Block Development Officer, Barari Katihar. The



petitioner claims for payment of pension DCRG, Leave encashment, GPF Group Insurance benefits of ACP Promotion and thereupon enhanced pensionary benefits Pension & DRG had already been authorized under P.P.O. No.-201611161065 on dated 14.01.2016 departmental sanction. It is further to state that a letter has also been written to Block Development Officer, Barari, Katihar in this regard requesting therein to send the service book alongwith pension revision sanction order if applicable, vide office letter no.Pen-16-G349-53 dated 04.05.2018 and intimation with regard to the same has been given for the petitioner and other concerned.”

Learned counsel contends that from a perusal of the said affidavits and the averments, there is no basis for drawing any presumption that all full and final payments have been made to the appellants.

It is in this background that the present appeal has been filed contending that the learned Single Judge has erroneously assumed the full and final payments of the retrial benefits of the appellant. To substantiate the submissions, the averments made in paragraph-8 and 9 of this appeal are extracted hereinunder:-

“8. That it s stated that the pay scale of the petitioner has not been revised and the amount of differences in salary on the basis of pay revision has not been paid and final pension has not been fixed. The



pension of the petitioner has to be fixed at revised pay scale since the date of Superannuation. It is stated that provisional gratuity amount Rs. 2,37,450/- has been mentioned vide bill No. 116/14-15 which has not been given and remaining amount of gratuity has not been mentioned. The petitioner was appointed Panchayat Secretary on 01.06.1989 and retired on 31.07.2013. Petitioner is also entitled for A.C.P. which has not been given.

9. That the petitioner was paid only provisional pension vide Bill No. 117/14-15 amounting to Rs. 1,66,915/- Bill No. 118/14-15 amount to Rs. 38967/- i.e. till December, 2014. Further, the petitioner received arrear of salary from 28-09-2011 to 31-01-2012 amounting to Rs. 83070/- vide Bill No. 134/14-15, and salary of Feb, 2012 amounting to Rs. 20906/- vide Bill No. 134/14-15 and from 01.03.2012 to 06.03.2012 amounting to Rs. 4046/- vide Bill No. 133/14-15 G.P.F. amounting to Rs. 2, 72, 787/- vide Bill No. 87/2015-16, leave encashment amounting to Rs. 2,38,450/- vide Bill No. 14/2018-19. But Group Insurance amounting to Rs. 68,104/- vide Bill No. 139/13-14 and provisional Gratuity amounting to Rs. 2, 37, 450/- vide Bill No. 116/14-15 have not been received by the petitioner.”

It may be mentioned that that the appellant had also filed a review application before the learned Single Judge which was withdrawn on 14th of February, 2019 with a liberty to prefer an appeal. This is how, the matter has come before us and the



learned counsel for the appellant contends that in the absence of the finalization of the claim of the appellant, the payments to which he is entitled cannot be said to have been finally made. The issue, therefore, does not get foreclosed on such a presumption.

Learned counsel appearing for the State of Bihar submits that full details had been given in the affidavits filed before the learned Single Judge along with the copy of the service book making the relevant endorsements therein.

We have considered the submissions raised and what we find is that there were certain payments which do not appear to have been made and which is also evident from the counter affidavit filed by the the Accountant General wherein it has been stated that the service book had been called for in order to finalize the same. Apart from this, the appellant had alleged non-payment of final pension as well as other amounts indicated in paragraph 8 and 9 of the appeal extracted hereinabove.

We, therefore, find that the ends of justice would be met if a direction is issued to the District Panchayat Raj Officer, Barari to forthwith examine the said entire claim of the appellant and send his report to the higher competent authority who is empowered to take a decision in this matter within a



period of six weeks from the date of the presentation of a certified copy of this order before him. The entire claim as made by the appellant shall be taken into account and the recommendation, if any, arising out of the same shall be forwarded to the said competent authority who shall within three weeks thereafter pass an appropriate order for release of any such amount which may be due to the appellant including his pensionary benefits and such other benefits that have been claimed by him. The claim of the appellant for revision of pay-scale as well as any other pecuniary benefits shall also be decided.

The appeal stands disposed of with the said directions and the impugned judgment stands modified accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	

